

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

M.F.A.No.514 of 2002(A)

W.C.C.NO.123/1997 OF THE COURT OF THE COMMISSIONER FOR
WORKMEN'S COMPENSATION & DEPUTY LABOUR COMMISSIONER, KANNUR.

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APPELLANT: OPPOSITE PARTY:-

STANES MOTORS (SOUTH INDIA) LTD.,
KALPETTA, WAYANAD.

BY ADV. SRI.JOSEPH MARKOSE

RESPONDENTS: APPLICANT & COMMISSIONER:-

1. A.K.SAIDHU, S/O.KUNHAMMED,
MADIYOORKUNI, ONIVAYAL, KALPETTA.
2. THE COMMISSIONER FOR WORKMEN'S
COMPENSATION & DEPUTY LABOUR COMMISSIONER, KANNUR.

BY ADV. SRI.T.KURIAKOSE PETER
SRI.ABRAHAM P.GEORGE

THIS MISCELLANEOUS FIRST APPEAL HAVING BEEN FINALLY
HEARD ON 23/03/2007, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:-

K.Padmanabhan Nair,J.

M.F.A.No.514 of 2002

Dated, this the 23rd day of March, 2007

JUDGMENT

The 1st Opposite Party in W.C.C.No.123 of 1997, who is the employer, has filed this appeal challenging the judgment passed by the Commissioner for Workmen's Compensation & Deputy Labour Commissioner, Kannur by which the 1st respondent-workman was awarded an amount of Rs.61,296/- as compensation.

2. The 1st respondent was working as Workshop Mechanic Grade-D in the factory of the appellant. On 15.11.1996, he sustained an injury while setting the timing of a tractor engine. His left index finger phalanx was cut. 1st respondent-applicant filed a petition claiming Rupees Three Lakhs as compensation. 1st respondent produced Exhibit A1 Discharge Certificate and Exhibit A3 Medical Certificate, which were issued by Leo Hospital, Kalpetta. The 1st respondent was directed to appear for an examination

before the Medical Board to assess the disability. The Medical Board, after assessment, issued Exhibit X1 certificate stating that the 1st respondent has permanent mild disability of 3% and by the terminal loss of phalanx of the index finger, he has a functional disability of 16%. The Commissioner, therefore, fixed the loss of earning capacity at 16% and allowed compensation. Challenging that order, this appeal is filed.

3. The appellant is challenging the wages of the 1st respondent. In view of Exhibit A7 series of Pay Slips produced in this case, I am not inclined to interfere with the finding regarding wages.

4. The injury sustained by the 1st respondent is a scheduled injury. Going by the schedule, the maximum percentage that can be fixed is 9%. Therefore, it cannot be fixed as 3% or 16%, but only 9%. The compensation awarded is, therefore, excessive. The compensation due to the 1st respondent is to be calculated as follows:
$$1913 \times 60 \times 9 \times 209.92 / 100 \times 100 = \text{Rs.}21685$$
, which will carry

interest at the rate of 12% per annum. It is stated by the learned counsel for the appellant that the appellant had deposited 50% of the amount awarded by the authority below. So far as the amount deposited is concerned, interest ceases to accrue from the date of deposit.

In the result, the appeal is disposed of in the above terms. C.M.P.No.3047 of 2002 shall stand dismissed.

K.Padmanabhan Nair
Judge

vku/-